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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 ECOLOGICAL RIGHTS FOUNDATION, a
non-profit corporation,

15 Plaintiff,

16 v.

17 CITY OF EUREKA, a municipal corporation,

18 Defendant.

19 Case No. 4:22-cv-01459-JST

20 **REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO MODIFY
THE CONSENT DECREE**

21 Date: December 12, 2024

Time: 2:00 p.m.

Courtroom: 6

Judge: Honorable Jon S. Tigar

22 Trial Date: Vacated

Action Filed: March 8, 2022

1 Pursuant to Federal Rules of Evidence, Rule 201, Defendant City of Eureka (“City”)
 2 hereby requests the Court to take judicial notice of the following documents in support of its
 3 Motion to Amend the Consent Decree:

4 1. *Waste Discharge Requirements for the City of Eureka Elk River Wastewater*
 5 *Treatment Plant Humboldt County*, National Pollutant Discharge Elimination System Permit
 6 No. CA0024449, California Regional Water Quality Control Board, North Coast Region Order
 7 No. R1-2016-0001 as adopted on June 16, 2016 (“2016 NPDES Permit”). The 2016 NPDES
 8 Permit is available at
 9 https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2016/160616_001_Eureka_Elk_River_WWTP_NPDES.pdf and was last accessed by Anya Kwan on September
 10 25, 2024. A true and correct copy of this document is attached to the Declaration of Anya Kwan
 11 (“Kwan Decl.”) ¶2, Ex. A.

12 2. California Regional Water Quality Control Board, North Coast Region *Cease and*
 13 *Desist Order* No. R1-2016-0012 as adopted on June 16, 2016 (“2016 CDO”), as subsequently
 14 amended on June 29, 2020 by Order R1-2020-0020 (“CDO”). The CDO is available at
 15 https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2020/20_0020_Eureka%20CDO%20Modification.pdf and was last accessed by Anya Kwan on September 25,
 16 2024. A true and correct copy of this document is attached to the Kwan Decl. ¶3, Ex. B.

17 3. First Amended Petition for Writ of Mandate and Complaint for Declaratory and
 18 Injunctive Relief, filed April 8, 2024, in the lawsuit pending in the Sacramento County Superior
 19 Court, styled as *Humboldt Waterkeeper, et al. v. North Coast Regional Water Quality Control*
 20 *Board, et al.* (Case No. 24WM00044) (“Writ Petition”). A true and correct copy of this
 21 document is attached to the Kwan Decl. ¶8, Ex. C.

22 4. *Waste Discharge Requirements for the City of Eureka Elk River Wastewater*
 23 *Treatment Plant Humboldt County*, National Pollutant Discharge Elimination System Permit
 24 No. CA0024449, California Regional Water Quality Control Board, North Coast Region Order
 25 No. R1-2023-0016 as adopted on October 5, 2023 (“2023 NPDES Permit”). The 2023 NPDES
 26 Permit is available at

1 https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2023/23_0016_NPDES.pdf and was last accessed by Anya Kwan on September 11, 2024. A true and correct
 2 copy of this document is attached to the Kwan Decl. ¶5, Ex. D.

3 5. Regional Water Quality Control Board, North Coast Region Staff Summary
 4 Report from October 5, 2023 which is available at
 5 https://www.waterboards.ca.gov/northcoast/board_info/board_meetings/10_2023/pdf/4/eureka-ssr-oct2023.pdf and was last accessed by Anya Kwan on September 25, 2024. A true and correct
 6 copy of this document is attached to the Kwan Decl. ¶4, Ex. E.

7 6. Rescission Order No. R1-2023-0021, Rescission of Cease and Desist Order No.
 8 R1-2016-0012, as subsequently amended by Order R1-2020-002 as adopted on December 18,
 9 2023. The Rescission Order is available at
 10 https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2023/R1-2023-0021.pdf and was last accessed by Anya Kwan on September 11, 2024. A true and correct copy
 11 of this document is attached to the Kwan Decl. ¶6, Ex. F.

12 7. Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief,
 13 filed March 1, 2024, in the lawsuit pending in the Sacramento County Superior Court, styled as
 14 *Humboldt Waterkeeper, et al. v. North Coast Regional Water Quality Control Board, et al.* (Case
 15 No. 24WM00044). A true and correct copy of this document is attached to the Kwan Decl. ¶7,
 16 Ex. G.

17 Judicial notice is appropriate pursuant to Federal Rule of Evidence 201(b), which provides
 18 that the Court may notice a fact that is not subject to reasonable dispute because it “can be
 19 accurately and readily determined from sources whose accuracy cannot reasonably be
 20 questioned.” Judicial notice may be taken of court filings and other matters of public record.
 21 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746, fn. 6 (9th Cir. 2006) (citing
 22 *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir.
 23 1998)).

24 Items 1, 2, 4 and 6 are orders issued by the Regional Water Quality Control Board
 25 (“Regional Board”) that are available online whose accuracy cannot be reasonably questioned.

1 Items 3 and 7 are public records on file with the state courts whose accuracy cannot reasonably be
2 questioned. Item 5 is a summary report from Regional Board staff that is available online whose
3 accuracy cannot reasonably be disputed because the Summary Report was drafted by representatives
4 of a public entity and is issued on the official letterhead of the Regional Water Board. The City
5 respectfully requests that the Court take judicial notice of these matters in considering its Motion
6 to Amend the Consent Decree.

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Dated: October 4, 2024

BEST BEST & KRIEGER LLP

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By:/s/ Anya Kwan

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